

San Antonio Police Officer Association

Art. 28 & 29 Discipline

Administrative Process

- Terminating Officers is an administrative procedure not a criminal investigation
- Per Department Policy, Officers are compelled to answer questions to IA regarding misconduct (Garrity v. New Jersey)
- Officers do not have the right to remain silent in this process
- Additional misconduct charges can be levied if Officers are not truthful

Formal Complaint Process

IA

- IA investigation to include Officer's statement
- IA forwards case to CARB

CARB

- Determines if complaint is sustained
- Recommendation for punishment

Chief

- Loudermill Hearing
- Discipline decision

IA Investigation

- IA receives the complaint and collects evidence
- IA notifies the Officer to respond
- Once at the IA Office, the Officer is provided the opportunity to examine the evidence against them
- Officer is compelled to make a statement against self-interest
- IA presents the findings to CARB

CARB Procedure

- CARB has civilian board and sworn board
- Complainant can choose to address the boards
- Officer can choose to address the boards (without representation)
- CARB discusses the case; each board votes to determine if the allegation is sustained
- If sustained, each board recommends discipline (board is provided a range of past discipline for that allegation and the officer's discipline history)
- The Chairperson presents each board's recommendation to the Chief

Chief's Decision

- Chief receives the two recommendations from the Civilian Board and the Sworn Board
- Chief has the ability to consider the Officer's prior discipline
- Chief has the ability to consider prior discipline that has been given to other officers for the same allegation
- Chief meets with the Officer and his representation (Loudermill Hearing)
- Chief decides on discipline

The Need for a Neutral 3rd Party Review

Humans are Not Infallible

- The Chief being human has preconceived ideas, biases, and opinions
- The neutral 3rd party review process protects good officers from excessive discipline and assures the Chief's decision is based in fact
- Discipline decisions should be consistent and fair based on the allegations presented

Avoid Political Pressure

- The Police Chief is subject to political pressure when making Department decisions
- The Police Chief answers to the City Manager, City Mayor, and City Council
- The Police Chief is not protected by Civil Service
- Across the country, Police Chiefs are being fired, resigning, and retiring in response to political pressure

Comparative Discipline

- Used to assure fair and consistent discipline is administered
- Only allows the use of discipline from similar misconduct allegations
- Only the current Chief's prior discipline decisions are used to show disparate treatment
- Comparative discipline can also be used to justify the discipline decision

Police Officer Position

- Should be free from political influence
- Termination of the Officer requires Due Process to assure termination is just and fair
- Due Process is found in the 5th and 14th Amendments of the Constitution

What Constitutes Due Process

1. A pretermination hearing coupled with a post termination appeals hearing
2. Pretermination hearing is the Loudermill Hearing
 - a) Notice
 - b) Explanation of evidence
 - c) Ability to present own explanation
3. Post-termination hearing
 - a) Unbiased/Impartial Tribunal
 - b) Ability to present own evidence including calling witnesses
 - c) Cross-examine witnesses

Arbitration Completes Due Process

- Arbitration is the Appeal process once the decision to terminate the officer is made
- It provides a neutral 3rd party review and an evidentiary hearing
- It is the Officer's 1st opportunity to present his/her own evidence, call witnesses, and cross-examine witnesses
- Post-termination hearing to protect against bias, political pressure and disparate treatment.

Partial Review Is Not Due Process

- Cannot pick and choose the items to review in Arbitration
- Discipline administered is what terminates the Officer's employment thereby requiring Due Process
- Neutral 3rd Party Review of discipline assures the discipline is appropriate and just; not based on factors other than case evidence

Standard of Proof

Beyond a Reasonable Doubt

Clear and Convincing Evidence

Preponderance of Evidence

Substantial Evidence

Probable Cause



Preponderance of Evidence

- More than 50% likely
- Standard for Civil Court Proof
- Standard for Administrative Civil Hearings
- Should be required for Arbitration because Arbitration is required in lieu of court

Substantial Evidence

- Below 50% likely, a mere scintilla of evidence
- Used in Appellate Review because extreme deference is given to the lower court
- Arbitration is a neutral review of the case, which implies no deference to the prior decision

Neutral 3rd Party Hearing

- Keeps Officer discipline outside the political process and free from bias
- Fulfills Due Process with a post termination hearing before an impartial reviewer that allows the Officer to present a complete case
- Preponderance of Evidence is the Civil Court standard and should use because Arbitration seeks to avoid court involvement

SAPOA Proposed Discipline Reform

SAPOA Proposed Discipline Reform

- Created 3 categories for discipline
 - Minor misconduct – 180 days from occurrence
 - Major misconduct – 180 days from discovery
 - Criminal misconduct – 180 days from discovery
- Addresses the community's concern that officers will escape discipline for major misconduct

SAPOA Proposed Discipline Reform

- Interrogatories cannot be taken out of the IA Office
 - Addresses the concern that officers would have access to evidence and construct a response with unlimited time
- Instead of 48hr Rule of notice for Officers to arrive in IA to respond to a complaint it would be 24hrs of notice
 - Addresses the concern that officers have access to evidence prior to arriving in IA to respond
- Allows the use of all the Officer's prior relevant discipline when making the discipline decision
 - Addresses the concern over disappearing discipline

SAPOA Proposed Discipline Reform

- Allows Chief and Officer to agree to longer periods of suspension
- Removes automatic appeal for mailed notification of a suspension requiring the officer or officer's attorney to appeal in 30 days.
- Increases the time IA is allowed to keep the Officer in the office for the investigation from 6 to 8 hours per day

City's Position v. SAPOA Response

City's Position	SAPOA Response
Problem with Arbitrator substituting their judgement for Chief's judgement	Due Process requires a neutral 3 rd party to review to avoid bias and disparate treatment
SAPOA proposal is status quo and reinforces existing process	Allows for use of relevant prior discipline in arbitration and Adjusts the timeframes to address discipline
SAPOA proposal perpetuates a bad precedent not course correction	City is attempting to set a dangerous precedent by allowing politics into the daily operations of the Police Department